IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

Bail Appl..No. 4993 of 2007()

AGAINST THE JUDGEMENT/ORDER IN BA.4436/2007 Dated 23/07/2007
CMP.1820/2007 of J.M.F.C.,ADIMALI
C.R.NO.17/07 OF EXCISE RANGE OFFICE AT ADIMALI

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: PETITIONER/4TH ACCUSED

SHYJU, AGED 32 YEARS,PURUSHOTHAMAN,
NELLITHANATH HOUSE,SHENGULAM KARA,
VELLATHOOVAL VILLAGE,DEVIKULAM TALUK,
IDUKKI DISTRICT.

BY ADV. SRI.PADAYATTEE YELDO

RESPONDENTS: COMPLAINANT

STATE OF KERALA,REPRESENTED BY THE
EXCISE INSPECTOR, ADIMALY EXCISE RANGE,
REPRESENTED BY THE GOVT,PLEADER, HIGH COURT OF
KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4993 of 2007

Dated this the 17th day of August, 2007

ORDER

Application for regular bail. The petitioner is the 4th accused. Anti Narcotics Squad of the Excise Department intercepted a vehicle in which 234 litres of Indian Made Foreign Liquor was being carried. Two persons who were travelling in the vehicle allegedly took to their heels abandoning the vehicle. From the vehicle, a registration certificate of the vehicle was obtained. As per that, the 1st accused was the registered owner of the vehicle. A driving licence was also obtained from the vehicle. That was in the name of the 3rd accused. A medical certificate issued in the name of the the 2nd accused was available in the vehicle. He was arrayed as the 2nd accused.

2. The investigators have since realised that though the registration certificate stood in the name of the 1st accused, the petitioner was the person who was the actual owner of the vehicle on the date of the offence ie. 5.7.07. Their investigation has further revealed that the petitioner had run away from the vehicle when the vehicle was intercepted. It was thus that the petitioner has been arrayed as the 4th accused. The petitioner's application for anticipatory bail was dismissed as per order dated 23.07.07 in B.A.No.4436 of 2007. As per the observation therein, the petitioner

surrendered before the learned Magistrate on 30.07.07. He continues in custody from that date.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. It is true that the petitioner had purchased the vehicle from the registered owner of the vehicle on 30.06.07. But the petitioner had transferred the vehicle to another person on 3.7.07. Consequently he was not the actual owner on 5.7.07 when the offence was detected. He had produced before the Investigating Officer necessary documents to show that he had ceased to be the actual owner of the vehicle on 5.7.07. In these circumstances, the petitioner may now be enlarged on bail, it is prayed.

4. The learned Public Prosecutor does not oppose the application. But only prays that the investigator may be given some further time to complete the investigation.

5. I have considered all the relevant inputs. In the wake of opposition by the learned Public Prosecutor, regular bail can be granted to the petitioner only if this Court is in a position to entertain both the satisfactions contemplated under Section 41 A of the Kerala Abkari Act. At the moment and with the available inputs, I find it difficult to accept that the petitioner who admittedly had acquired

rights on the registered owner on 30.06.07 had ceased to be the owner w.e.f 3.7.07. I am, in these circumstances, satisfied that the learned Public Prosecutor's request for some further time to complete the investigation is justified. Regular bail can be granted only subject to the condition that the order of bail shall take effect only from a later date.

6. In the result, this application is allowed. The petitioner shall be released on bail on the following terms and conditions.

i) The petitioner shall not be released on the strength of this order prior to 22.08.2007. The Investigators shall in the meantime make every endeavour to complete the investigation.

ii) The petitioner shall execute a bond for Rs.50,000/- (Rupees Fifty thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

iii) The petitioner shall make himself available for interrogation before the Investigating Officer from the date of his release between 10 a.m and 12 noon on all Mondays and Fridays for a period of two months and thereafter as and when directed by the Investigating Officer in writing to do so;

(R.BASANT, JUDGE)

rtr/-